

701—230.10(423) Exclusive web search portal business and its exemption. Effective on or after July 1, 2007, a business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

230.10(1) Definitions. For the purpose of this exemption, the following definitions apply:

a. “Affiliate” means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

b. “Control” means any of the following:

(1) In the case of a United States corporation, the ownership, directly or indirectly, of 50 percent or more of the voting power to elect directors.

(2) In the case of a foreign corporation, if the voting power to elect the directors is less than 50 percent, the maximum amount allowed by applicable law.

(3) In the case of an entity other than a corporation, 50 percent or more ownership interest in the entity, or the power to direct the management of the entity.

c. “Web search portal business” means an entity among whose primary businesses is to provide a search portal to organize information; to access, search, and navigate the internet, including research and development to support capabilities to organize information; and to provide internet access, navigation, and search functionalities.

230.10(2) Criteria to claim exemption. The following govern whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a web search portal business:

a. All of the following requirements must be met by a web search portal business for the purpose of this exemption:

(1) The business of the purchaser or lessee shall be as a provider of a web search portal.

(2) The web search portal business shall have a physical location in Iowa that is used for the operations and maintenance of the web search portal site on the internet, including but not limited to research and development to support capabilities to organize information and to provide internet access, navigation, and search.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of \$200 million within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

b. Aggregation to meet requirements. A web search portal business that is seeking an exemption from sales and use tax under this exemption may meet the requirements found in subparagraphs 230.10(2)“a”(1) to (4) above, by aggregating various Iowa investments and other requirements with its business affiliates.

c. Failure to meet investment qualifications. If a web search portal business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the web search portal business, the web search portal business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the web search portal business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

230.10(3) Exempt purchases. Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

- a.* Computers and equipment that are necessary for the maintenance and operation of the web search portal business;
- b.* All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal;
- c.* All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph “*b*” above;
- d.* All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal;
- e.* All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal. This equipment includes, but is not limited to, exterior dedicated business-owned power substations, backup power generation systems, battery systems, and related infrastructure;
- f.* All equipment used in the racking system, including cabling and trays;
- g.* Fuel purchased by the web search portal business that is used in the backup power generation system and in all items listed in paragraphs “*a*” to “*f*.” This provision includes the fuel used in backup generators that may be located outside of the building that are used if power is interrupted to ensure the web search portal continues operation; and
- h.* Electricity purchased for use in operating the web search portal.

230.10(4) *Limitation of exemption.* The purchases or leases of the items listed in subrule 230.10(3) are only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose not related to operations or maintenance. Examples of items included in this limitation include but are not limited to:

- a.* Electricity not used for operation or maintenance, such as in the office or employee break room;
- b.* Tangible personal property used in areas of the web search portal facility that is not used for operation or maintenance, such as cleaning equipment and supplies;
- c.* Building materials that become part of real property, such as concrete, steel or roofing; and
- d.* Tangible personal property that becomes part of real property, such as a dishwasher.

230.10(5) *Initial date of exemption.* The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying web search portal business.

This rule is intended to implement 2007 Iowa Code Supplement section 423.3(92).